IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 135 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALWADI HIMATLAL AMBALAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 135 of 2004

MS JIRGA D JHAVERI for Petitioner No. 1-3

MS MITA PANCHAL APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 14/07/2004

ORAL JUDGEMENT

1. Rule. Ms. Mita Panchal, learned APP appears and waives service of notice of rule on behalf of respondent No.1 - State of Gujarat.

2. By filing instant petition under Article 226 of the Constitution, petitioners against whom Criminal Case No.2138 of 2002 arising out of offence registered vide CR No.I-231/01 at Patan City Police Station, for commission

of the alleged offences under sections 409, 420, 467, 120 B and 114 of IPC on the basis of the charge-sheet filed against them is registered, have prayed to issue a writ of certiorari or writ in nature of certiorari or any other appropriate writ, direction or order quashing and setting aside the order dated 30.7.2003 passed below Exs.13 and 14 in Criminal Case No. 2138 of 2002 and further prayed to condone the delay in filing Criminal Revision Application and direct the learned Sessions Judge to hear the Criminal Revision Application on its own merits.

3. The petitioners were members of managing committee of Patan APMC at the relevant time against whom offence is registered vide CR No. 231 of 2001 at Patan City Police Station for commission of the alleged offences under Sections 420, 467, 409, 406, 34 and 120B of the IPC. Pursuant to the registration of the FIR, investigation was started and during the course of investigation evidence was divulged against the present petitioners as well as others for commission of the alleged offences as mentioned in the FIR and therefore charge-sheet came to be filed against all of them including the present petitioners in the Court of learned JMFC, Patan where it came to be registered as Criminal Case No.2138 of 2002.

4. At the time of framing of the charge, present petitioners and other co-accused moved applications vide Exhs.13 and 14 praying to discharge them from the said proceedings. The learned JMFC Paten vide order dated 30.7.2003 rejected those applications.

5. Aggrieved thereby the present petitioners as well as other co-accused filed separate Criminal Revision Applications before the learned Additional Sessions Judge, Patan. So far as Criminal Revision Application No.33 of 2003 filed by other four co-accused persons are concerned, the said revision application came to be allowed vide order dated 5.12.2003 and thereby they are discharged from the proceedings of Criminal Case No. 2138 of 2002 whereas the present petitioners filed Criminal Misc. Application No.548 of 2003 seeking condonation of delay in filing criminal revision application. The application filed by the petitioners for condonation of delay in filing criminal revision application came to be rejected vide order dated 12.1.2004 which has given rise to the present petition.

6. I have heard Ms. Jirga Jhaveri, learned advocate of the petitioners and Ms. Mita Panchal, learned APP for

respondent No.1 - State of Gujarat. I have also perused the averments made in the petition as well as the impugned order by which the application seeking condonation of delay in filing the criminal revision application came to be rejected.

7. There is no dispute that FIR came to be registered against the present petitioners as well as other persons vide CR No.231 of 2001 at Patan City Police station for commission of the alleged offences as mentioned in the said complaint. During the course of investigation, evidence was divulged against the petitioners as well as others who were arraigned as co-accused in the said criminal case. Therefore, charge-sheet for commission of the alleged offences was filed in the court of learned JMFC, Patan where it is registered as Criminal Case No.2138 of 2002. Accused Nos.5, 6, 10, 12, 13 and 14 had filed application seeking discharge from the prosecution vide application Ex.13 whereas accused No.9 had filed application Ex.14 seeking discharge from the prosecution. Both the applications were heard together and came to be decided by the learned JMFC Patan who has dismissed the applications vide order dated 30.7.2003.

8. Aggrieved thereby four accused had filed Criminal Revision Application No.33 of 2003 which came to be allowed and thereby the order dated 5.12.2003 passed by the learned JMFC Patan was set aside and thereby four accused came to be discharged from the proceedings of Criminal Case No.2138 of 2002 whereas the Criminal Misc. Application No. 548 of 2003 filed by the present petitioners seeking condonation of delay in filing criminal revision application for more than two months came to be rejected vide order dated 12.1.2004.

9. It is true that the present petitioners are late by more than two months in filing Criminal Revision Application. However, the fact remains that the Criminal Revision Application filed by other co-accused persons seeking discharge from the proceedings came to be allowed and therefore it cannot be disputed that the present petitioners' revision application has not been decided on merits. According to this court, the learned Additional Sessions Judge ought to have allowed the application filed by the petitioners seeking condonation of delay in filing the Criminal Revision Application so that their criminal revision application could have been decided on merits.

10. It may be noted that in Criminal Misc.

Application No.548 of 2003 filed by the petitioners seeking condonation of delay in filing Criminal Revision Application wherein inter alia it is contended that applicant No.1 is an aged person and not keeping good health and he came to know about the order passed below Exhs.13 and 14 at a belated stage and he could not meet his lawyer and as a result thereof he could not file the Criminal Revision Application within stipulated time of 90 days prescribed under section 397 of the Code of Criminal Procedure. It is also asserted in the said application that applicant No.2 is the President of the District Panchayat elected on behalf of Congress Party and at the relevant time he was busy in election of the President of District Panchayat and therefore Criminal Revision Application was not filed within stipulated time. It may be appreciated that the aforesaid averments made in the application seeking condonation of delay had gone unchallenged and they were not controverted by the State Government by filing reply against the said averments. Besides this, according to this Court, delay in filing Criminal Revision Application has been sufficiently explained and there was plausible and acceptable reasons for the petitioners for not filing Criminal Revision Application in time. There was no inaction on the part of the petitioners in filing the Criminal Revision Application. Therefore, according to this Court, there was sufficient cause for the petitioners for not filing the Criminal Revision Application in time and since the delay in filing the Criminal Revision Application is sufficiently explained, there is no manner of doubt that Criminal Misc. Application No.548 of 2003 seeking condonation of delay in filing Criminal Revision Application deserves to be allowed. For this very limited purpose the matter is required to be remanded to the learned Additional Sessions Judge, Patan after condoning the delay as prayed for which would meet the ends of justice.

11. Seen in the above context, the order passed by the learned Additional Sessions Judge in Criminal Misc. Application No.548 of 2003 deserves to be quashed and set aside by allowing the said application by which the petitioners have prayed to condone the delay in filing criminal revision application.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 12.1.2004 passed by the learned Additional Sessions Judge, Patan in Criminal Misc. Application No.548 of 2003 is hereby quashed and set aside and accordingly the said application is allowed. Resultantly, delay caused in

filing the criminal revision application is condoned. The matter is remanded to the learned Additional Sessions Judge, Patan for deciding the Criminal Revision Application on merits. The learned Additional Sessions Judge shall decide the said criminal revision application on its own merit and in accordance with law.

13. It is made clear that this Court has not examined the merits of the criminal revision application which is filed by the present petitioners and it is for the learned Additional Sessions Judge to decide the same in accordance with law and on its own merits.

14. Rule is made absolute to the aforesaid extent.

(A.M. Kapadia, J.)

(karan)